



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 14
1222 SPRUCE ST
RM 8.302
SAINT LOUIS, MO 63103-2829

Agency Website: www.nlr.gov
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August 22, 2016

LOREN GIBSON, ESQ.
GIBSON & ASSOCIATES
105 N Hudson Ave Ste 312
Oklahoma City, OK 73102-4801

Re: Nestle Purina PetCare
Case 14-CA-178259

Dear Mr. GIBSON:

We have carefully investigated and considered your charge that Nestle Purina Petcare Company has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge alleges that since (b) (6), (b) (7)(C), 2015, the Employer has retaliated against employees, and failed to bargain to impasse, by disciplining employees for attendance absences for the prior twelve month period, following an arbitration award in which the arbitrator ruled that the Employer's "no fault" attendance points policy had been unilaterally implemented in March 2014.

The investigation showed that the Union had filed a charge in Case 14-CA-134060 contesting the Employer's unilateral implementation of a new attendance policy. The Region Director deferred further proceedings on that charge to the parties' grievance-arbitration system. In November 2015, an arbitrator held that the Employer must rescind the new policy and reinstate the former policy. The investigation showed that the Employer had requested that the Union bargain over the implementation of the arbitration award, but the Union declined to do so. Thereafter, the Employer rescinded the new policy, reinstated the old policy, reinstated employees' former attendance point balances which had been reverted to zero with the implementation of the new policy, reviewed employees' attendance during the period the new policy had been in effect, and assessed points and discipline for attendance infractions pursuant to the old policy for the period the new policy had been in effect. The instant charge seeks to contest the Employer's reinstatement of the former point balances, the assessment of points under the old policy during the period the new policy was in effect, and the imposition of discipline for those assessments. The investigation failed to show that the Employer's actions were discriminatory or that the Employer refused to bargain. Rather, the investigation disclosed that the issues concerning the propriety of the Employer's remedial actions over the arbitration award involve matters of court enforcement of the award, rather than a cause of action before the Board. See *Malrite of Wisconsin, Inc.*, 198 NLRB 241, 242 (1972).

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **September 6, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 3, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before September 6, 2016**. The request may be filed electronically through the **E-File Documents** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 6, 2016, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Daniel L. Hubbel

DANIEL L. HUBBEL
Regional Director

Enclosure

cc: (b) (6), (b) (7)(C)
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